

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

00-2324 (L), 00-2325  
Brickwood Contractors v. Datanet Engineering  
(Davis)

NATURE OF CASE

Rehearing en banc.

COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:00 a.m.

TUESDAY, OCTOBER 28, 2003

REVD 9/25/03

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

03-6  
Frank Ray Chandler v. R.C. Lee  
(Tilley)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

03-1344  
Official Committee v. Steven Goldstein  
(Garbis)

EMPLOYMENT. Whether employee's fixed-term employment contract was converted to an "at will" contract for bankruptcy purposes.

03-1283  
Research Triangle v. USA

ADMINISTRATIVE AGENCY. Whether the Federal Railroad Administration has jurisdiction over proposed commuter rail transit operation.

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
Beginning at conclusion  
of en banc rehearings

TUESDAY, OCTOBER 28, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

02-1656  
Washington-Dulles v. Metropolitan  
(Hilton)

CONTRACTS. Challenge to summary judgment in action arising out of award of new contract for airport taxicab concession.

03-1375  
Earle Ausherman v. Bank of America  
(Garbis)

FAIR CREDIT REPORTING ACT. Challenge to summary judgment in action alleging defendants improperly obtained credit reports; denial of motion to amend to add class action allegations; denial of motion to disqualify judge in action against his mortgage holder.

02-2274  
South Atlantic v. David Riese  
(Howard)

JUDGMENTS. Whether the district court had jurisdiction under Rule 54(c) to grant post-mandate request for set-off and allocation.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
Beginning at conclusion  
of en banc rehearings

TUESDAY, OCTOBER 28, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1152  
R L Jordan Oil v. Boardman Petroleum  
(Herlong)

CIVIL. Whether S.C. Code Section 39-5-325 violates due process clause of South Carolina Constitution; other issues.

03-1112  
Consolidation Coal v. Latusek

BLACK LUNG. Whether ALJ properly weighed medical opinion evidence; whether substantial evidence supports ALJ's decision awarding benefits.  
15 mins. per side

02-2288  
Gay Pfister v. Commissioner IRS

FEDERAL INCOME TAX. Whether portion of former husband's military retirement payments that taxpayer received in divorce settlement was taxable income.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
Beginning at conclusion  
of en banc rehearings

TUESDAY, OCTOBER 28, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1122  
Karen Wilson v. Graham Cnty Soil  
(Thornburg)

FALSE CLAIMS ACT. Whether the six-year statute of limitations in 31 U.S.C. Section 3731(b) applies to retaliation claims under 31 U.S.C. Section 3730(h).

03-6362 (L), 03-6363  
Ira Madison v. R. Riter  
(Turk)

CONSTITUTIONAL LAW. Whether Section 3 of the Religious Land Use and Institutionalized Persons Act violates the Establishment Clause.

02-2340 (L), 02-2368  
US Bank Trust v. Venice MD LLC  
(Legg)

LEASES. Whether tenant is entitled to recover gross revenues generated during landlord's possession of commercial property; attorney's fees and costs.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 420 (Tweed Carpet)  
Beginning at conclusion  
of en banc rehearings

TUESDAY, OCTOBER 28, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

02-1469  
Andrew Bourne v. E I DuPont  
(Copenhaver)

PRODUCTS LIABILITY. Challenge to exclusive expert opinions on causation in action concerning birth defects allegedly caused by plant fungicide.

03-1817  
In re: Microsoft Corp  
(Motz)

ANTITRUST. Challenge to the application of the doctrine of collateral estoppel.

03-1277 (L), 03-1599  
Biovail Corp v. Verum Pharmaceuticals  
(Boyle)

UNFAIR TRADE PRACTICES. Challenge to preliminary injunction ordering corporation to cease operations and enforcing non-compete agreements with former employees.

03-1150 (L), 03-1151  
Virginia Anderson v. Westinghouse  
(Currie)

EMPLOYMENT. Challenge to summary judgment and denial of class certification in action alleging Title VII and civil rights violations.

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
9:30 a.m.

WEDNESDAY, OCTOBER 29, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

02-2173  
Troy Harris v. Michael Holland  
(Williams)

ERISA. Whether a mine worker established he qualified for disability benefits from the UMWA pension plan.

03-1319  
Adrienne Ward v. Ronald Knight  
(Brinkema)

CIVIL RIGHTS. Challenge to qualified immunity of sheriff for sexual misconduct of deputy while on duty.

03-1257  
Richard Goldstein v. Harry Moatz  
(Brinkema)

ADMINISTRATIVE AGENCY. Challenge to dismissal of action against officials of the Patent and Trademark Office based on immunity; discovery issues.

03-6321  
USA v. Grant Lee  
(Wexler)

CRIMINAL LAW & PROCEDURE. Whether victim's subsequent medical exam information qualified as newly discovered evidence justifying a new trial under Fed. R. Crim. P. 33.

PANEL II  
\*\*\* COURTHOUSE ANNEX \*\*\*  
Room 229  
9:30 a.m.

WEDNESDAY, OCTOBER 29, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4008  
USA v. John Perkins  
(Haden)

FOURTH AMENDMENT. Whether probable cause existed to stop vehicle when suspicious activity was reported by tipster who did not identify herself.

03-1136  
Trak Auto v. West Town Center  
(Jackson)

BANKRUPTCY. Whether lease provisions constitute an unenforceable anti-assignment provision.

Start time adjusted to 9:00 a.m.

02-1986 - Case continued

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
\*\*\* 9:00 a.m. \*\*\*

WEDNESDAY, OCTOBER 29, 2003



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1272 (L), 03-1317

Retail Services v. Freebies Publishing  
(Brinkema)

TRADEMARK. Challenge to summary judgment in action alleging  
infringement, dilution and wrongful use of domain name;  
attorney fees.

03-1043

Jennifer Lauer v. Schewel Furniture  
(Turk)

TITLE VII. Whether district court erred in setting aside  
jury verdict on retaliation claim and granting judgment as  
a matter of law; punitive damages.

03-1517

What-A-Burger v. Whataburger  
(Smith)

TRADEMARK. Whether declaratory action for ownership of mark  
was barred by estoppel, laches and/or acquiescence.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 420 (Tweed Carpet)  
9:30 a.m.

WEDNESDAY, OCTOBER 29, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

02-2324  
RCSH v. Third Crystal  
(Ellis)

CONTRACTS. Challenge to summary judgment in action arising  
out of damage to leased premises.

02-2417  
Michael Moroney v. USA  
(Cacheris)

BANKRUPTCY. Whether debtor's federal income tax liabilities  
were dischargeable after a Substitute of Return by the IRS.

03-1378  
Gary Jeffreys v. Communications Workers  
(Hilton)

LABOR. Challenge to summary judgment in action alleging  
breach of union's duty of fair representation.

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 30, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

02-2389 (L), 02-2427  
Roy Jones v. Liberty Mutual  
(Messitte)

INSURANCE. Challenge to insurers' prorating the insurance obligations for asbestos-related bodily injuries, allocation, and liability for "completed operations."

02-2225 (L), 02-2239  
Thomas Ward v. Kim Damico  
(Day)

TORTS. Whether district court erred by failing to apply state's "Boulevard Rule" to vehicle accident case; challenge to admission and exclusion of eyewitness testimony.

02-2151  
Ronald Decker v. UNUM Provident  
(Beaty)

INSURANCE. Whether district court erred by excluding evidence of Social Security disability in disability insurance case; whether counterclaim of fraud was properly presented to the jury.

03-1029  
David Miller v. Pacific Shore Funding  
(Smalkin)

CIVIL. Whether district court erred in dismissing claims against secondary mortgage lenders for lack of standing; other issues.

02-2389(L) - Moved to first at the direction of the panel.

02-2151 - Moved to third to accommodate the above change.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 30, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
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NUMBER AND STYLE

NATURE OF CASE

02-2329  
Blaustein & Reich v. Bradley Buckles  
(Morgan)

ADMINISTRATIVE AGENCY. Whether ATF is authorized under the Gun Control Act to require firearms dealers to provide information concerning secondhand firearm sales.

02-2461  
Invention Submission v. James Rogan  
(Brinkema)

INVENTOR'S RIGHTS ACT. Challenge to dismissal of action against the Patent and Trademark Office for publicizing customer complaint against invention promoter.

02-4430  
USA v. Dale Hodge  
(Morgan)

SENTENCING GUIDELINES. Whether 1996 drug sales constitute relevant conduct under USSG Section 1B1.3 for 1999 drug conviction; other issues.  
15 mins. per side

03-1020  
Benjamin Weitz v. Bardyl Tirana  
(Messitte)

BANKRUPTCY. Whether the bankruptcy court abused its discretion in entering sanctions order against debtor's attorney.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 30, 2003

UNITED STATES COURT OF APPEALS  
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(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

02-1987  
Amzura Enterprises v. Rowe Inc  
(Hilton)

CONTRACTS. Whether district court erred in awarding non-monetary consequential damages in the form of residual value of vehicles conveyed to alternative lender.

03-1238  
MCImetro Access v. BellSouth  
(Howard)

TELECOMMUNICATIONS. Challenge to district court decision upholding state utilities commission's decision on telecommunications interconnection agreement.

02-2075  
Ready Transportation v. Military Traffic  
(Ellis)

FEDERAL TORT CLAIMS ACT/BIVENS. Liability of government and defendants sued in individual capacities for claims concerning government contracts for hauling services.

02-2306 (L), 02-2307 02-2308 02-2355  
Joseph Parrish v. Paul Cleveland  
(Wexler)

CIVIL RIGHTS. Challenge to denial of qualified immunity to police officers in wrongful death action.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 420 (Tweed Carpet)  
9:30 a.m.

THURSDAY, OCTOBER 30, 2003

UNITED STATES COURT OF APPEALS  
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NUMBER AND STYLE

NATURE OF CASE

02-2028  
USA v. Martha McHan  
(Voorhees)

ATTORNEY'S FEES. Challenge to denial of fees and expenses  
on remand under the Equal Access to Justice Act.

03-4024 (L), 03-4098  
USA v. Christopher Hill  
(Williams)

CRIMINAL LAW & PROCEDURE. Whether superseding indictment  
was based on prosecutorial vindictiveness; whether district  
court erred in dismissing the government's Section 851  
notice.

03-4032  
USA v. Tyrone Smith  
(Payne)

CRIMINAL LAW & PROCEDURE. Whether larceny from the person  
under Virginia law is a crime of violence for sentencing as  
a career offender.

02-1527  
Frederick Higginbotham v. KCS Intl  
(Garbis)

PRODUCT LIABILITY. Challenge to summary judgment in action  
arising out of an injury caused by an allegedly defective  
boat ladder.

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
\*\*\* 8:30 a.m. \*\*\*

FRIDAY, OCTOBER 31, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

02-1850  
Stuart Seldowitz v. Office of Inspector  
(Lee)

PRIVACY ACT. Challenge to district court's reversal of  
magistrate judge's decision to allow plaintiff to amend his  
complaint; denial of discovery sanctions; attorney's fees.

02-2305  
Brian Froelich v. Senior Campus  
(Grimm)

CORPORATIONS. Challenge to the amount of a statutory  
appraisal of a state limited liability corporation.

02-4431  
USA v. Zbigniew Lesczynski  
(Friedman)

SENTENCING. Whether obstruction of justice enhancement is  
supported by witness's voluntary perjury; other issues.

02-4567 (L), 02-4609 02-4697  
USA v. Robert Sisk  
(Thornburg)

CRIMINAL LAW & PROCEDURE. Whether sufficient evidence  
supported jury's finding of drug quantity; whether  
managerial role enhancement was warranted.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
8:30 a.m.

FRIDAY, OCTOBER 31, 2003

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(10/28/2003 - 10/31/2003 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1557

Ana Toscano v. Brian Sterner  
(Garbis)

TORTS. Whether statutory employer's superintendent was  
immune from liability for alleged negligent acts.

02-1855

Choice Hotels v. Chewl's Hospitality  
(Williams)

ARBITRATION. Challenge to arbitration award arising from  
termination of franchise agreement.

03-1195

Progressive Paloverde v. Hartford Fire  
(Goodwin)

INSURANCE. Whether district court erred in determining  
primary uninsured motorist policy coverage; whether  
district court erred in failing to apply pro rata clauses  
in policies.

02-1535

David Partington v. John Pennington  
(Turk)

SECURITIES. Whether plaintiff had standing to bring action  
regarding unregistered securities held as rabbi trust  
assets; challenge to denial of intervention and class  
certification.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
8:30 a.m.

Friday, October 31, 2003